

Appl. No. 09/772,572
Amend. Dated September 23, 2003
Reply to Office Action of June 18, 2003

•• REMARKS/ARGUMENTS ••

The Official Action of June 18, 2003 has been thoroughly studied. Accordingly, the changes made herein to the claims, considered together with the following remarks, are believed to be sufficient to place the application into condition for allowance.

The present Preliminary Amendment is being filed together with a Request for Continued Examination (RCE).

By the present Preliminary Amendment, independent claim 1 has been changed to recite that the transversely opposite side edges of each of the front and rear waist regions are bonded directly together.

This change to independent claim 1 excludes the use of the fastening tabs of U.S. Patent No. 4,911,702 to O'Leary et al. and is believed to therefore distinguish applicants' invention over the prior art of record.

Support for this change to independent claim 1 can readily be found in Fig. 1.

Entry of the change to independent claim 1 is respectfully requested.

Claims 1, 2, 4 and 5 are pending in this application.

In the Office Action of June 18, 2003 the Examiner rejected claims 1, 2 and 5 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,911,702 to O'Leary et al.

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On page 3 of the Official Action the Examiner objected to claim 4 as being dependent upon a rejected base claim, but has otherwise indicated that claim 4 would be allowed if rewritten in independent form.

For the reasons set forth below, it is submitted that all of the pending claims are allowable over the prior art of record and therefore, the outstanding rejection of claims 1, 2 and 3 and object of claim 4 should properly be withdrawn.

Favorable reconsideration by the Examiner is earnestly solicited.

The Examiner has relied upon O'Leary et al. as disclosing "a disposable diaper 2, as shown in figure 4, comprising a liquid-pervious topsheet, a liquid impervious backsheet, and an absorbent core, as described in column 4, lines 45-56."

The Examiner states that the diaper of O'Leary et al. "further comprises a crotch region, front and rear waist regions 4 and 6, a waist opening 18, and a pair of leg openings 10."

The Examiner states that the diaper of O'Leary et al. includes fastening tape strips 30 that are provided on the outer surface of the backsheet extending in a longitudinal direction as shown in figure 1, which fastening tape strips "have longitudinally opposed end regions 32 and 34 bonded to the diaper, and an intermediate region 36 extending between the opposite end regions 32 and 34, as shown in figure 5."

The Examiner states that the "intermediate region 36 comprises an adhesive region 44 that bonds to the outer peripheral surface of the diaper 2, as shown in figure 6."

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The Examiner further states that the "intermediate region 36 defines an angle and projects outward transversely of the diaper 2, as shown in figure 8."

According to the Examiner, the "fastening tape strips 30 are fully capable of attaching the outer surface of the diaper 2 to hold the diaper 2 in a rolled up state for disposal."

The Examiner states that the "diaper 2 comprises front and rear waist regions 4 and 6 that are bonded together to form the waist opening 18 and leg openings 10, as shown in figure 4, and while the front and rear waist regions 4 and 6 are not bonded together, the diaper is still fully capable of being pulled onto a wearer after the front and rear waist regions 4 and 6 are bonded together."

Applicant's independent claim 1 is directed to a "pull-on disposable diaper" in which "transversely opposite side edges of each of said front and rear waist regions being bonded directly together."

The Examiner has relied upon O'Leary et al. to reject applicants' independent claim 1 by taking the position that the "front and rear waist regions of the disposable diaper disclosed by O'Leary et al. (4,911,702) are bonded together by joining the adhesive region 44 to the target tape 22, as shown in figure 4."

The Examiner states (on page 3 of the Official Action) that "[t]he adhesion between the adhesive region 44 and the target tape 22, while only temporary, nonetheless constitutes bonds."

Because the transversely opposite side edges of each of the front and rear waist regions in applicants' claimed "pull-up" diaper are bonded directly together, applicants' invention excludes the fastening tabs 38 of O'Leary et al.

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Accordingly, applicants' invention structurally distinguishes over O'Leary et al.

Moreover, it is urged that applicants' recitation of a "pull-on" diaper itself alone distinguishes over O'Leary et al.

O'Leary et al. teaches an "open-type" diaper which requires fastening elements such as attachment tabs 38 to secure the sides of the diaper together.

The art recognizes a distinct difference between "closed-type" (also referred to as "pants-type" and "pull-up") diapers and "open-type" diapers.

For example, see U.S. Patent No. 5,593,400 to O'Leary (Exhibit "A" - submitted herewith) at column 1, lines 15-19 and Figs. 1 ("open-type" diaper) and 9 ("closed-type" diaper).

It is impermissible for the Examiner to construe the "open-type" diaper of O'Leary et al. as being a "pull-up" diaper in order to read O'Leary et al. on applicants' claimed pull-up diaper.

It is particularly impermissible for the Examiner to construe a reference in a manner that is contrary to the accepted definitions and practice in the art, let alone contrary to the teachings of the reference.

In addition to be structurally different, "open-type" and "pull-up" diapers have recognized functional and utility differences.

Pull-on diapers are generally used by older children who can pull their diapers up and down for potty training. Open-type diapers are generally used on younger infants and, rather than being pulled on, have side edges on the rear waist portions that are wrapped about an infant's waist so as to

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overlap the front waist portion and be secured thereto with fastener tapes as depicted by O'Leary et al.

O'Leary et al. does not teach a "pull-up" diaper.

The art distinguishes between "pull-up" and "open-type" diapers.

It is improper for the Examiner to ignore accepted art terminology and construe O'Leary et al.'s "open-type" diaper as being or reading on a "pull-up" diaper.

Based upon the above distinctions between the prior art relied upon by the Examiner and the present invention, and the overall teachings of prior art, properly considered as a whole, it is respectfully submitted that the Examiner cannot rely upon the prior art as required under 35 U.S.C. §102 as anticipating applicants' claimed invention.

It is, therefore, submitted that any reliance upon prior art would be improper inasmuch as the prior art does not remotely anticipate, teach, suggest or render obvious the present invention.

It is submitted that the claims, as now amended, and the discussion contained herein clearly show that the claimed invention is novel and neither anticipated nor obvious over the teachings of the prior art and the outstanding rejection of the claims should hence be withdrawn.

Therefore, reconsideration and withdrawal of the outstanding rejection of the claims and an early allowance of the claims is believed to be in order.

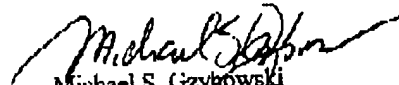
It is believed that the above represents a complete response to the Official Action and reconsideration is requested.

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If upon consideration of the above, the Examiner should feel that there remains outstanding issues in the present application that could be resolved; the Examiner is invited to contact applicants' patent counsel at the telephone number given below to discuss such issues.

To the extent necessary, a petition for an extension of time under 37 CFR §1.136 is hereby made. Please charge the fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 12-2136 and please credit any excess fees to such deposit account.

Respectfully submitted,


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